

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RONALD HOLTZ,

Plaintiff,

v.

JOELLA PHILLIPS, Physician  
Assistant; PETER BECK, MSW, M-Div,  
Mental Health Program Manager;  
WASHINGTON DEPARTMENT OF  
CORRECTIONS, SECRETARY BERNARD  
WARNER, ACTING ASSISTANT SECRETARY  
KEVIN BOVENKAMP, DEPUTY DIRECTOR  
SCOTT R. FRAKES, (DOC)  
MANAGER/MEDICAL DIRECTOR ROY  
GONZALEZ, (DOC) HEALTH CARE MANAGER  
MARY JOE CURREY, COYOTE RIDGE  
CORRECTIONS CENTER, SUPERINTENDENT  
JEFFREY UTTEHT, HEALTH CARE MANAGER  
DARREN CHLIPALA, DR. B. RODRIGUEZ,  
PSYCHIATRIST DR. MICHAEL REZNICEK,  
WASHINGTON STATE PENITENTIARY,  
SUPERINTENDENT, STEVEN SINCLAR,  
MEDICAL DIRECTOR JAMES EDWARDS, DR.  
F. SMITH, MENTAL HEALTH PHYSICIAN  
MELANIE HOWARD, AMERICAN  
DISABILITIES SPECIALIST HOLLY  
DE/CAMBRE (DOC), in official and  
individual capacities, CHIEF  
MEDICAL OFFICER G. STEVEN HAMMOND,  
PH.D.,

Defendants.

No. 4:CV-14-5018-EFS

**ORDER DENYING PLAINTIFF'S MOTION  
TO STRIKE AND MOTION FOR  
TEMPORARY RESTRAINING ORDER**

24  
25  
26

Before the Court are two motions filed by Plaintiff Ronald  
Holtz: 1) Motion to Strike, ECF No. 119, and 2) Motion for Temporary  
Restraining Order/Preliminary/Prospective Relief, ECF No. 120. Both

1 motions are opposed by Defendants. After reviewing the record and  
2 relevant authority, the Court is fully informed and denies both  
3 motions.

4 First, Mr. Holtz asks the Court to strike Defendants' July 2,  
5 2014 Amended Answer, ECF No. 110, because it was filed more than  
6 twenty-one days after service of process, without the Court's  
7 permission. Because the Court previously gave the non-Department-of-  
8 Corrections Defendants (who were unserved at that time) leave to file  
9 an answer within sixty days after a courtesy copy of the Complaint was  
10 mailed to the Washington State Attorney General's Office, ECF No. 68,  
11 and the Amended Answer was filed within this time frame, the Court  
12 denies Mr. Holtz's Motion to Strike.

13 Second, the Court declines to issue the requested preliminary  
14 relief. Mr. Holtz requests the Court require Washington State  
15 Department of Corrections (DOC) to 1) release him from the Intensive  
16 Management Unit (IMU), 2) refrain from further retaliatory actions, 3)  
17 provide him with a medical wedge, and 4) restore his release date to  
18 January 26, 2015. In support of these requests, Mr. Holtz declares  
19 that his access to the law library and copies of legal documents has  
20 been denied, his medical conditions require a medical wedge, medical  
21 personnel have refused to see him, and his classification level and  
22 release date have been negatively adjusted in retaliation for his  
23 pursuit of his legal and medical rights.

24 Many of these requests pertain to classification matters:  
25 matters that do not relate to the claims asserted by Mr. Holtz in his  
26 Complaint, which seeks relief for violations of his Eighth Amendment

1 right to be free from cruel and unusual punishment in that Defendants  
2 have been deliberately indifferent to his medical needs. Accordingly,  
3 the Court declines to address Mr. Holtz's request that he be released  
4 from the IMU and his release date be restored, actions that are  
5 dependent upon his inmate classification level. See *De Beers Consol.*  
6 *Mines v. United States*, 325 U.S. 212, 220 (1945) (recognizing that the  
7 court must limit injunctive relief to matters that are before the  
8 court).

9 As to the matters that pertain to this lawsuit, *i.e.*, Mr.  
10 Holtz's claim that he must have a medical wedge and he has been denied  
11 access to his legal materials, the prison library, and ability to make  
12 legal telephone calls, the Court finds that Mr. Holtz failed to show  
13 that he is entitled to this extraordinary prospective relief. See  
14 *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 747 (9th Cir.  
15 2014) (recognizing that a preliminary injunction is an extraordinary  
16 remedy). Beginning with Mr. Holtz's medical concerns, the record  
17 indicates that Mr. Holtz is seen at Stafford Creek Corrections Center  
18 by Dr. Strick or another doctor as needed, and that he is seen by  
19 other medical personnel on a more regular basis if he submits a kite  
20 specifically requesting sick call. Although Mr. Holtz has yet to be  
21 provided a wedge, Mr. Holtz was given the opportunity to ask Sergeant  
22 Slvaggi for an extra blanket to elevate his upper body. July 1, 2014  
23 Offender's Kite, ECF No. 120-2. Mr. Holtz disagrees that a blanket,  
24 rather than a wedge, is sufficient to prop his upper body while he  
25 sleeps to reduce the symptoms he experiences from his gastroesophageal  
26 reflux disease and other medical conditions. However, a difference in

1 medical opinion regarding treatment does not amount to deliberate  
2 indifference to his medical needs. See *Sanchez v. Vild*, 891 F.2d 240,  
3 242 (9th Cir. 1989).

4 The Court is concerned with Mr. Holtz's statement that PAC  
5 Gregory Schaller refused to see him, ECF No. 120 at 5. In response,  
6 Dr. Steven Hammond, who is DOC's Chief Medical Officer, advised that  
7 he does not recall an incident where PAC Schaller refused to see Mr.  
8 Holtz. ECF No. 126 ¶ 5. To ensure that such an event did not occur  
9 for an inappropriate reason, and to help ensure that Mr. Holtz  
10 receives appropriate medical care, the Court requires DOC to file a  
11 declaration from PAC Schaller regarding any such alleged incident.  
12 This declaration shall be filed no later than **September 12, 2014**; Mr.  
13 Holtz is given leave to file a declaration responding to the subjects  
14 discussed by PAC Schaller no later than **September 30, 2014**. Yet, even  
15 assuming at this time that PAC Schaller refused to see Mr. Holtz on  
16 one occasion, Mr. Holtz failed to show that this refusal caused  
17 sufficiently serious harm to his health and safety. See *Jett v.*  
18 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) ("Under 42 U.S.C. § 1983,  
19 to maintain an Eighth Amendment claim based on prison medical  
20 treatment, an inmate must show deliberate indifference to serious  
21 medical needs.") (internal quotation removed)). For these reasons,  
22 the Court denies Mr. Holtz's request for prospective medical relief.

23 In addition, the record reflects that DOC responds in a  
24 reasonable time and manner to Mr. Holtz's many Offender's Kites and  
25 grievances. Mr. Holtz failed to show that DOC's responses to his  
26 requests for legal telephone calls impermissibly infringe on his

1 ability to pursue this lawsuit. Rather, the record reflects that on  
2 May 30, 2014, DOC staff advised him that staff would place Mr. Holtz  
3 at a location that he could make a legal telephone call the next day  
4 at 9:00 a.m.; on June 13, 2014, Mr. Holtz was advised that he could  
5 work with his unit sergeant and floor staff as outlined in the IMU  
6 handbook to place legal telephone calls; on June 15, 2014, Mr. Holtz  
7 was reminded to review the IMU handbook for specific directions as to  
8 how to schedule a legal call; and again on June 16, 2014, Mr. Holtz  
9 was reminded to read the IMU handbook at page 9 regarding placing  
10 legal telephone calls. ECF No. 120-2. There is no evidence that Mr.  
11 Holtz's ability to obtain copies of legal documents or access law  
12 library materials is impermissibly hindered. See *Lewis v. Casey*, 518  
13 U.S. 343, 351 (1996). In summary, Mr. Holtz failed to show that he is  
14 being denied "meaningful access to the court[]." *Bounds v. Smith*, 430  
15 U.S. 817, 823 (1977).

16 For the above-given reasons, **IT IS HEREBY ORDERED:**

- 17 1. Mr. Holtz's Motion to Strike, **ECF No. 119**, is **DENIED**.
- 18 2. Mr. Holtz's Motion for Temporary Restraining Order/  
19 Preliminary/Prospective Relief, **ECF No. 120**, is **DENIED**.
- 20 3. Defendant DOC shall file no later than **September 12, 2014**,  
21 a declaration from PAC Gregory Schaller regarding his  
22 contact or lack of contact with Mr. Holtz; Mr. Holtz may  
23 file a declaration responding to the subjects discussed by  
24 PAC Schaller no later than **September 30, 2014**.

25 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
26 Order and forward a copy to Plaintiff and counsel.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**DATED** this 28<sup>th</sup> day of August 2014.

\_\_\_\_\_  
s/Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge